

COMMISSIONERS APPROVAL

CHILCOTT *g*

LUND *BL*

THOMPSON *AK*

TAYLOR (Clerk & Recorder)

Date.....December 13, 2005

Members Present.....Commissioner Greg Chilcott, Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Sally Fortino & Glenda Wiles

The Board of County Commissioners met to review the Mauka Ridge Minor Subdivision. Present were Planner Kelli Zitterguren and Terry Nelson of Applebury Survey.

Commissioner Lund read the following statement: Today's agenda includes one or more land use issues. Because of my years of service as Ravalli County Clerk & Recorder and now as Commissioner and because members of my family are involved in the real estate profession, I am providing this statement in the interest of full and open disclosure. My husband, son and brother-in-law are realtors who conduct business in this county. I do not participate in their real estate business or related matters except as the passive title owner of the building rented by their real estate business. Although connections with my family or their business and the land use issues facing us today are possible, I am not aware of any direct connections and thus do not believe I have any conflicts of interest arising out of my participation in today's meeting.

Kelli submitted the staff report for the Mauka Ridge Minor Subdivision.



REQUEST FOR COMMISSION

ACTION

OG-05-12-1199

Site Visit: December 8, 2005 at 3:30 p.m.

To **approve** the Mauka Ridge Minor Subdivision, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report, with Condition #7 amended to require a \$250 per lot contribution to the Hamilton School District prior to final plat approval.

V. PLANNING BOARD'S RECOMMENDED CONDITIONS

(Note: Changes to staff's recommended conditions are in underline/~~strike-out~~)

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

Notification of Proximity to Agricultural Operations. This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. *(Effects on Agriculture)*

Lots within this subdivision do not currently have the right to take irrigation water out of the irrigation ditch within or adjacent to this subdivision. Taking water without a water right for irrigation purposes is illegal. *(Effects of Agricultural Water User Facilities)*

Limitation of Access Onto County Road. A non-ingress/egress zone exists along Bowman Road, which restricts vehicular access onto this County-maintained road, excepting the approved location for the internal subdivision road. All lots within this subdivision must use the approved access point. This limitation of access may be lifted or amended with approval of the County. *(Effects on Local Services & Effects on Public Health and Safety)*

Notification of Road Maintenance. Ravalli County, the State of Montana, or any other governmental entity does not maintain the road within this subdivision and therefore does not assume any liability for improper maintenance or the lack thereof. A Road Maintenance Agreement was filed with this subdivision and outlines what parties are responsible for road maintenance and under what conditions. *(Effects on Local Services & Effects on Public Health and Safety)*

2. Protective covenants to be filed with the final plat shall include the following provisions:

Living with Wildlife. (See letter from FWP, which is Exhibit A-6, for required provisions.) *(Effects on Agriculture & Effects on Wildlife and Wildlife Habitat)*

Waiver of Protest to Creation of RSID/SID. Owners and their successors in interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to creating and/or improving a community water or wastewater treatment system and improving and/or maintaining the roads that access the subdivision, including related right-of-way, drainage structures, and traffic control signs. *(Effects on Local Services)*

Building Standards. As a condition of approval recommended by the Hamilton Rural Fire District, the houses within this subdivision are required to be built to IRBC building standards. For more information, contact the Hamilton Rural Fire District and PO Box 1994, Hamilton, MT 59840. *(Effects on Local Services & Effects on Public Health and Safety)*

Required Posting of County-Issued Addresses for Lots within this Subdivision. The Hamilton Rural Fire District has adopted Fire Protection Standards which require the lot owners to post County-issued addresses at the intersection of the driveways leading to the primary residence and the road providing access to the lot as soon as construction on the residence begins. *(Effects on Local Services & Effects on Public Health and Safety)*

Access Requirements for Lots within this Subdivision. The Hamilton Rural Fire District has adopted Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', which may include a two-foot shoulder on each side of an 18' wide travel surface, a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Hamilton Rural Fire District for further information on the requirements of the Hamilton Rural Fire District. *(Effects on Local Services & Effects on Public Health and Safety)*

Primary Heat Source. The primary heat source for the newly constructed residences in this subdivision shall be at least 75% efficient. *(Effects on Natural Environment)*

Control of Noxious Weeds. Lot owners shall control the growth of noxious weeds on their respective lot(s). *(Effects on Natural Environment)*

Lighting for New Construction. Full cut-off lighting shall be required for any new construction within this subdivision. A full cut-off fixture means fixtures, as installed, that are designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly

from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light emitted. The source of light is fully shielded, top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. Spotlighting of flag poles shall be permitted. *(Effects on Public Health & Safety)*

Radon Exposure. The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. *(Effects on Public Health and Safety)*

Amendment. The covenants filed with the final plat shall state that written Governing Body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval.

3. The final plat shall show the locations of all irrigation easements, as shown on the preliminary plat. *(Effects on Agricultural Water User Facilities)*
4. The final plat shall show a non-ingress/egress zone along the Bowman Road frontage of this subdivision, excepting the location for the internal road, Trails End. *(Effects on Local Services & Public Health and Safety)*
5. The applicant shall install a stop sign at the intersection of Trails End and Bowman Road, subject to review and approval of the Planning Department, in consultation with the Road Department. *(Effects on Local Services & Public Health and Safety)*
6. The applicant shall include an RSID/SID waiver in a notarized document filed with the subdivision plat that states the following: Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners and any successors in interest to any future RSID/SID, based on benefit, for a community wastewater system, community water system, or upgrading roads leading to or within the subdivision, including but not limited to paving, curbs and gutters, non-motorized transportation facilities, street widening, and drainage facilities. *(Effects on Local Services)*
7. The applicant shall provide evidence that a \$250 per lot contribution has been made ~~an amount per lot (to be decided by the Planning Board) has been contributed~~ to the Hamilton School District prior to final plat approval. *(Effects on Local Services)*
8. The applicant shall meet the water supply requirements of the Hamilton Rural Fire District, subject to review and approval of the Hamilton Rural Fire District, or provide evidence that a financial contribution of \$500 per lot to the Fire District was made prior to final plat approval. *(Effects on Local Services & Public Health and Safety)*

9. The applicant shall provide evidence with the final plat submittal that he has applied for County-issued addresses for each lot within this subdivision. (*Effects on Local Services & Effects on Public Health and Safety*)

REMAINING ISSUES: None known.

FISCAL IMPACT: No extraordinary fiscal impacts noted.

ATTACHMENTS: Application package and additional application materials
Staff Report
Planning Board meeting minutes (with relevant attachments)

STAFF: Kelli Zittergruen

DATE: December 5, 2005

Kelli noted no variances are required since the developer expects to reconstruct the road to meet present County requirements. The Planning Board and staff both recommend approval of the Minor Subdivision.

Commissioner Chilcott called for public comment.

Terry said there was a question on covenants. It is expected that the covenants on the three lots to the south will be extended to the new subdivision.

Nancy Holzer stated the depletion of water is a concern. Presently, her well produces 60-80 gallons per minute. Commissioner Chilcott commented that wells are permitted by the State, through the DEQ.

Terry said DEQ has reviewed the area, and believes there is sufficient water.

Commissioner Chilcott asked for further input, for or against. None forthcoming, public comment was closed; the Board of County Commissioners began deliberations.

Commissioner Thompson stated any negative aspects always concern the Commissioners. If the DEQ and DNRC have visited the issue, however, the concern is alleviated. He added that a property able to pump only one gallon per minute does not indicate the same rate for surrounding properties. Commissioner Thompson stated his concern as regarding the covenants: will the covenants be the same, but dealt with as separate entities? Terry said it has the same wording, but three new lots. The road maintenance agreement may be incorporated into the new lots. The existing covenants cover the existing lots; new covenants with the same wording will cover the new lots. There are no covenants on the entire piece. Commissioner Thompson asked about agricultural water. Terry said there is an agricultural ditch, but no water rights. Commissioner Thompson indicated he had no more questions.

Commissioner Lund said it appears that a variance will be required for proposed lots, due to the road layout. Kelli said there is no intersection; the picture conceals the actual configuration of the roads. Commissioner Lund said it should be shown as a privately maintained public access.

Commissioner Chilcott asked if there would be an amendment clause on the restricted covenants. Terry said they were not amending the covenants. Commissioner Chilcott stated amendment language on a 3-lot subdivision could add covenants to the language, then remove covenants and turn the property into commercial property. We have to protect neighbors so they know what is coming in with these small subdivisions. No amendment provision for covenants leaves an open door. Terry restated the owner wants to keep the same covenants as those on the property to the south. Commissioner Chilcott said if an amendment provision is to be added, the Board of County Commissioners should be informed now.

Kelli said the covenants we added and those already there offer nothing new. Commissioner Lund said there is no provision for amendments on the covenants given. Terry expressed that he is only concerned with housing types allowed. Commissioner Chilcott asked if that could be part of a conditional approval. Terry said he doesn't have the authority to decide that no amendments will ever be added, but the owner has stated that he wants to do the same with these lots as has been done on the lots to the south. Terry added his only interest is in the type of dwelling that is allowed. Commissioner Chilcott stated the proposed covenants address that.

Commissioner Lund asked if amendments should be attached to covenants. Terry said the elements in the covenants to the south would be included in the covenants for the property under discussion. The plans intend a residential area, not a commercial area. James said the County has the option to require covenants that are related to subdivision review criteria. The Board of County Commissioners has jurisdiction over those things that have an effect on subdivision review criteria. Other covenants are controlled to the extent they affect review criteria. If Ravalli County had zoning regulations they might apply. Unless there is an adverse effect on the subdivision, the Board of County Commissioners has no power to condition covenants. Terry said some neighbors wanted to know if apartments or trailers would be allowed. The property owner said the same covenants would apply as on the south property.

Commissioner Chilcott said there is a fear of the unknown with no covenants. Very small subdivisions make him dubious because they can be changed to anything. James said unless you find something that has an adverse affect in review criteria, it is not pertinent to the decision-making process.

Commissioner Lund asked James to explain the effect of a recent letter from the Sheriff's office, regarding sufficient public safety coverage for the proposed minor subdivision. James said the memo means you are finding sufficient public safety coverage. Cite elements of record to support your finding. #116 states "cite two elements of record to

support your conclusion.” He said the Sheriff’s letter should not be part of the discussion, unless the Board of County Commissioners agrees with its conclusions. Commissioner Thompson said the sheriff writes the same letter for two lots or for 45 lots, whether the proposed subdivision is 1 mile from the sheriff’s office or 45 miles from the sheriff’s office. James said, “Do not include anything that you disagree with in your findings. Strike exhibit #14 from your findings.”

James recommended the reference in Exhibit A-5 be removed. Commissioner Chilcott agreed with removing Exhibit A-5. Proximity to sheriff’s office has little to do with ability to cover. James said under criteria 3 & 6, add similar findings. There are adequate public services to serve this subdivision and protect public health and safety. There are facts in the file to support that. He recommended removing the first clause from #7, “according to the subdivision application”.

Commissioner Thompson said the second paragraph in the Sheriff’s letter was not true. The Sheriff’s budget increases significantly each year. James said it is not necessary to refute all negatives in the record; it is necessary to include all positive references.

Commissioner Thompson asked if all agency letters are seen the same way.

James said it is impossible to refute all negatives, but you can make it a point to include all positive references.

Commissioner Chilcott said he appreciates the developer and agent bringing a subdivision without a number of variance requests.

Commissioner Lund made a motion to recommend approval of the Mauka Ridge Minor Subdivision, based on the findings of fact and conclusions of law in the staff report, with the striking of Exhibit A-5 from the staff report, removing “according to the subdivision application” from finding #7 under Public Health and Safety, and the addition of a new finding under both Local Services and Public Health and Safety that reads, “There are adequate public services to serve this subdivision”, and subject to the conditions in the staff report, with the inclusion of the new language under the “Amendment” provision in Condition #2; Condition #7 amended to require a \$250 per lot contribution to the Hamilton School District prior to final plat approval, and with additional Condition #10 stating “Trails End shall be labeled as a privately maintained public access and utility easement on the final plat.” Commissioner Thompson seconded the motion, and all voted “aye”.

The Board met to continue their discussion in regard to the Bitterroot Heaven Subdivision Final Approval. It was determined that Mr. and Mrs. Skaggs have not received the letter of credit from the bank with the changes discussed at the December 12th meeting. They indicated they could have that letter available at 3:00 p.m. today. Commissioner Lund made a motion to continue this meeting until 3:00 p.m. this date. Commissioner Thompson seconded the motion and all voted “aye”.

The Board met to continue their discussion of the extension request for Illinois Bench Estates Subdivision. Planner Renee Van Hoven was present with a time line of submittal dates, road regulations, extension fees, and pro rata shares in regard to this subdivision.

It was noted that the delay of this subdivision had nothing to do with the Road Department because the developer did not request the pro rata until after the new road regulations came into effect in August 2005. Commissioner Thompson made a motion to grant the extension to the Illinois Bench Subdivision, contingent upon the County receiving the additional \$180.00 in extension fees. Commissioner Lund seconded the motion and all voted "aye".

The Board addressed a letter from the Victor Volunteer Rural Fire Department asking the County to write a letter to their insurance company showing the Commissioners are aware of the Fire Department establishing a second company, for a Quick Response Unit. James asked why they were forming a second unit. Earl Grey stated some of the fire fighters are not trained in this response unit, and therefore a second company within the Fire Department needs to be established. James stated the Fire Trustees have this responsibility and he does not see the legal requirement of the Commissioners to establish this second company. Earl stated this is simply a letter for the insurance company showing this second company. Commissioner Chilcott asked why they needed to establish a second company. Fire personnel said Bitterroot Valley Emergency Medical Services (ambulance service) removed their ambulance on December 6th. Therefore, in order to serve their citizens, they found the need to establish a second company. They are now in the 'hunt' for an emergency vehicle. This QRU (quick response unit) for the second company is being formed, due to the result of the removal of this ambulance. They have received great support from the community and Marcus Daly Hospital Medical Doctors.

Prior to the ambulance being removed, the Victor Ambulance would cover the Stevensville area, if the need arose. Sometimes there is no crew to staff the ambulance in Stevensville and Victor is called to answer those calls. Now they have no ability to cover any ambulance calls. The ambulance in Stevensville is scheduled to have six -12 hour shifts for the months of December.

It was noted the QRU response unit could respond to the medical calls, holding the patient until an ambulance arrived.

Earl Grey stated on December 6th they found their ambulance gone with a note on their fire hall table stating 'here is their key' and a letter that followed from Kendall Neff, owner of the Bitterroot Valley Emergency Medical Services. The letter stated the personnel needed to turn in their available hours before the end of the month. If the staff did not comply with this requirement then they would 'voluntarily resign'. Victor Fire Personnel stated the reason Kendall pulled the ambulance was because there were no members left to staff the ambulance. Rod Turner stated he started with BVEMS when he started his tenure with the Fire Department. Volunteers, such as himself, were given a small stipend to volunteer their services. Rod stated he was 'voluntarily resigned' because he did not submit his available hours. Rod noted Kendall is the person who classified him as 'voluntary resigned'. Rod stated he did not resign. Four other employees received this status from Kendall, also.

Rod stated they had received numerous memos that 'demanded' certain actions from the volunteers. Because of this attitude from Kendall, many volunteers left the staff services.

The ambulance was taken by BVEMS back to Hamilton, and for several nights prior to the establishment of the QRU, they had no ambulance service in Victor. They had to rely on Hamilton for any ambulance services.

The Board concurred they would have no problems writing a letter to the insurance company recognizing this second company is being formed within the Victor Fire Department for a QRU (quick response unit). Glenda will call the insurance agent and prepare that letter. Commissioner Thompson made a motion to that effect, Commissioner Lund seconded the motion, and all voted. "aye".

Commissioner Chilcott noted there seems to be an underlying problem with the Bitterroot Valley EBMS, which has been shown through the above-noted discussion. Various members of other Fire Departments and previous EMT's who assisted the Bitterroot Valley Emergency Medical Services (ambulance) were present, along with Civil Counsel James McCubbin. The issue of concern from Jeff Motley and Rod Turner was the 'lack of services' that the ambulance service is now providing to the citizens of the valley.

Jeff Motley of Stevensville stated this is not a new situation with Kendall Neff. Stevensville has been fortunate to have a QRU. It is their mission to provide back up service to the Stevensville ambulance in the event they were unable to respond. They would simply provide medical care until another ambulance arrived. In September they responded to 50 calls per month, when they had previously responded to 50 calls per year. They sent a letter to BRVEMS stating their concerns in order to facilitate servicing their community in a better manner. They also wrote a letter to Missoula to ascertain if ambulance services could be utilized in Stevensville. After that letter, BRVEMS stated they were the 'transport care in Ravalli County'. Various fire districts stated Kendall told them they had a contract with Ravalli County. It was noted that is not true, there is no exclusivity. Rod stated they asked for the closest ambulance being dispatched to their area and Kendall stated it should be a BVEMS ambulance (no matter where the location).

Commissioner Chilcott read a letter stating they are a primary care ambulance, they do not have an exclusive contract. Rod stated he has verbally told them he is the only ambulance to be in the County.

Jeff Motley stated they met with Missoula Ambulance and found they need to respond to all calls. On Nov 14th they put in a formal request to 9-1-1, stating they should be dispatched to all medical calls in conjunction with the ambulance. Because they were not sure where the ambulance would be rolled from, we wanted to be there to provide some medical services during the 20 minute wait for the ambulance.

Jeff Welch stated Kendall stopped providing volunteer personnel on December 4th for the ambulance service. He had not given an availability of his time because he had returned from the Gulf Coast for hurricane relief. There is no coverage during the day for the

Stevensville area. There are five permanent personnel with BVEMS left in Stevensville along with an ambulance. Jeff stated he personally resigned.

Another EMT volunteer stated she is an employee of BRVEMS in the Darby and Sula areas. She has been involved in emergency medical services for over thirty years. The Hamilton area became a hostile work area so she left this area and works now in Darby and Sula. She has 26 crewmembers in Darby, they are loyal and many are volunteers. If she leaves they will resign. All of the supervisors were terminated, due to a restructure last week. The Darby and Sula areas are still employees, however. She met with the Darby Crew and told them she was no longer their supervisor. They still have an ambulance. In order to protect their end of the valley they felt they needed to form a QRU. She would run the QRU per the request of the volunteers. The Painted Rocks QRU is supportive of this, and willing to help staff a vehicle, if needed, in Darby. They are in the process of forming QRU (non-transporting). If the ambulance services were to be terminated from their area, they would apply for a transporting license. They prefer not to apply for that as it requires other staff for billing etc.

It was noted Kendall now has 7 ambulances in Hamilton, one in Darby and one in Stevensville.

In Darby, they are paid volunteers, receiving 50 cents per hour for their standby and a set amount for each call. QRU's are important because they know the local community, and time is of the essence when medical services are needed.

The Board discussed the lease language with BVEMS. James advised the Commissioners they have the basis to terminate the lease as it appears there is a breach of contract. The lease requires the ambulance provide ambulance and medical services to citizens and the facts presented today show this is not being done. Any activities must conform to Federal, State and local ordinances. James noted Kendall has tax liens, so they are not complying with the laws. There is a provision to maintain ambulances in clean and sanitary condition, and Commissioner Chilcott stated there is information that is not being done. There is a requirement for insurance and payment, which Glenda requested. Only the notice of insurance was received this date.

Commissioner Thompson asked if they showed breach of contract, could the ambulances be sold. James stated they do not need a breach of contract to sell the ambulances. The lease language allows the Commissioners to sell the ambulances. However, the ambulances need to be sold at auction. He stated they could send a letter to Kendall Neff notifying him of a breach of contract. The county can then lease the ambulance to other entities. Commissioner Thompson asked if the county ever designated 'exclusive ambulance services.' The answer is no. Jeff Welch stated the county would not want an exclusive ambulance service because that would prohibit Life Flight etc., from Missoula. Jeff Welch stated this is a community issue. Two ambulance services in the last five years have not been able to make it due to call volume. Jeff stated while this issue is financially driven, it is important to realize there are numerous EMS-qualified people on

the north end of the valley and they choose not to work for Kendall. Jeff stated this issue needs to be fixed 'for the community's sake'.

Citizen Larry Draper of Victor felt the county was not being pro-active enough for this issue. He said the County is too passive, and the Commissioners should review their budget to help the district volunteers.

Commissioner Thompson relayed John Bartos stated it costs \$750,000 per year to run the ambulance service. State statutes allow Commissioners to levy two mills without a vote of the people. Two mills would only generate \$120,000.00 and one more mill that citizens can impose upon themselves will bring those monies up to \$180,000.00. Commissioner Thompson noted this amount is not close to what John Bartos stated an ambulance costs. Larry asked how John calculated this \$750,000. Discussion included the Medicare reimbursement which only totals 45%. Everyone agreed the costs and lack of reimbursement creates financial hardship for the ambulance.

There was discussion of other options include for the administration of the ambulance which includes a co-op (not for profit), which is owned by the community and a mill levy which would include the use of volunteers. It was also noted that a co-op would allow the use of grant money.

James stated there is no county license for ambulance and they can not license just one service. The county has the right to contract with more than one company for ambulance services. It was noted the mill levy has changed and if a mill levy were to be passed, the dollar amount is specified, not the mill levy. Each time the dollar amount is increased, the issue needs to go back to the voters.

Earl stated they would not need one of the three ambulances the county leases to Kendall, as they need four-wheel drive ambulances.

It was agreed the County could subsidize a private vendor, as they are leasing the three vehicles at \$2.00 per year to BRVEMS.

Commissioner Chilcott indicated the Commissioners need to meet with Kendall Neff in order to receive his comments and concerns addressed this date.

In other business, Extension Agent Rob Johnson met with the Commissioners in regard to the County and State budget for the Extension Agent salaries. Rob stated he is preparing to fill out the budget agreement with the State Extension Services, and questioned some of the account amounts. He stated the salaries for both he and Extension Agent Kathy Hammer are falling behind the recommendations made by MACo. Discussion included the State contribution towards these salaries, and the suggestion/recommendations made by MACo for the salaries. The Board determined the State is paying a larger portion of Rob's salary. However, Rob's salary dropped by \$500.00. Commissioner Chilcott suggested the county pick up the cost of living at 2.7%. Rob stated his salary should be calculated the same as Kathy's. Commissioner Chilcott noted some disparity between

last year's contract with the State and what the line items in the salaries are within the county budget.

Commissioner Lund indicated it appears they have made an error in the salaries. She will visit with accounting and the Internal Auditor, and check the figures in the hopes of rectifying this issue.

In other business the Board met with Mr. and Mrs. Skaggs to review the Letter of Credit from First Security Bank for the Bitterroot Heaven Subdivision. Also present at this meeting was Planner Ben Howell and Civil Counsel James McCubbin. James stated the Letter of Credit meets with his approval in regard to the legal review. He stated it is the Commissioners' discretion as to whether they accept a Letter of Credit. Also provided was the estimate for the paving project. Commissioner Chilcott said the county will need an engineer's approval after the paving is completed.

Commissioner Lund made a motion to grant final approval to the Bitterroot Heaven Subdivision, accepting the Letter of Credit in the amount of \$25,000.00, presented this date. Commissioner Thompson seconded the motion and all voted "aye".

The Board made a site visit to Corvallis Track Block 1 Lot 30 D Subdivision during the latter part of the afternoon.